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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange

Commissioner

P.S.A. Lamek, Q.C.

Counsel

E.A. Cronk

Associate Counsel

Thomas Millar

Administrator

Transcript of evidence
for

April 16, 1984

VOLUME 131

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DEATHS AT THE HOSPITAL FOR SICK CHILDREN
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Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Monday, the 16th day
of April, 1984.

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THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

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APPEARANCES:

P.S.A. LAMEK, Q.C.)	Commission Counsel
E. CRONK)	
D. HUNT)	Counsel for the Attorney
L. CECCHETTO)	General and Solicitor General
	of Ontario (Crown Attorneys
	and Coroner's Office)
I.J. ROLAND)	Counsel for The Hospital for
M. THOMSON)	Sick Children
R. BATTY)	
B. PERCIVAL, Q.C.)	Counsel for The Metropolitan
D. YOUNG)	Toronto Police
K. CHOWN	Counsel for numerous Doctors
	at The Hospital for Sick
	Children
B. SYMES	Counsel for the Registered
	Nurses' Association of Ontario
	and 35 Registered Nurses at
	The Hospital for Sick Children

(Cont'd)...



APPEARANCES: (Continued)

H. SOLOMON	Counsel for The Ontario Registered Nursing Assistants
D. BROWN	Counsel for Susan Nelles - Nurse
G.R. STRATHY) E. FORSTER)	Counsel for Phyllis Trayner - Nurse
J.A. OLAH	Counsel for Janet Brownless - R.N.A.
S. LABOW	Counsel for Mr. & Mrs. Gosselin, Mr. & Mrs. Gionas, Mr. & Mrs. Inwood, Mr. & Mrs. Turner, Mr. & Mrs. Lutes, and Mr. & Mrs. Murphy (parents of deceased children)
J. SHINEHOFT	Counsel for Lorie Pacsai and Kevin Garnet (parents of deceased child Kevin Pacsai)

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1 ---On commencing at 10:00 a.m.

2 THE COMMISSIONER: I have been
3 considering the Judgment of the Court of Appeal
4 and how it will affect the course of these proceedings.
5 The Judgment of course deals only with the form of
6 the Report in Phase I, but it seems to me it has
7 raised problems relating to the form of the Report
8 in Phase II, and perhaps of more immediate concern
9 relating to the evidentiary problems in both Phases.

10 The evidentiary problem in this Phase
11 arises out of the dicta at page 18 of the Judgment as
12 follows:

13 "The Commissioner is obliged to hear
14 all of the evidence relating to the
15 cause of death of the children and this
16 would include evidence that tended to
17 show that one or more of them died as
18 a result of unlawful or negligent acts.
19 While the Commissioner must not identify
20 an individual as being legally
21 responsible for a death he should
22 analyse and report upon all of the
23 evidence with respect to the circumstances
24 of each death."

25 It goes without saying that it would
be futile and perhaps illegal for me to hear any

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2 evidence that is not relevant to an issue I am
3 permitted to determine. I am permitted to determine
4 the cause of death, but if that cause should be an
5 overdose of digoxin, whether accidentally or
6 deliberately administered, I am not permitted to
7 name the administrator.

8 It follows that I may, indeed must,
9 receive all evidence that will assist me in determining
10 the cause of death. On the other hand I should not,
11 perhaps may not, receive any evidence that goes only
12 to identity. As so often happens the rule is easy
13 to state. Its application is more difficult, and
14 indeed in the words of the Court of Appeal it is
15 "Approaching the impossible".

16 Let me just mention some of the
17 evidence hitherto received without objection which
18 now may be irrelevant:

19 "(a) The alleged conflict between
20 nurses.

21 (b) The pills in the salad and in the
22 soup, and the telephone calls and the
23 markings on the cars and doors.

24 (c) The reaction of any particular
25 person to the cardiac arrests of the
children and to the drawing of blood



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2 "during those arrests and to the
3 prosecution of Susan Nelles.

4 (d) The evidence that a particular
5 person did or did not appear to
6 administer medication at a time when no
7 medication was prescribed.

8 (e) The presence or absence of any
9 person at the bedside of any child
10 during a critical period including the
11 findings of the Atlanta Report."

12 I have tentative views on all of these
13 evidentiary problems and until early this morning I
14 thought that we could proceed on those views dealing
15 with any new problem as it came up. I am now of the
16 view that the problems are so difficult and my views
17 are so tentative that we should not proceed with the
18 evidence until the problems so far as we can ascertain
19 them in advance are thoroughly discussed and argued.

20 The problem with Phase II is not of
21 course so urgent, but as I contemplate it it is much
22 more troublesome. I am concerned now that I may not
23 be able to make any comment upon the propriety, or
24 the conduct of any person in the course of the
25 investigation or prosecution, because a finding
adverse to any person may give rise to civil or



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2 criminal responsibility. Moreover, in the present
3 state of the law I might be able to comment adversely
4 on the conduct of some, for example, the Attorney
5 General and the Crown Counsel who are not subject
6 to civil liability, and be unable to do so with
7 respect to others, for example the Coroners and the
8 Police who are not.

8 To the extent that I could not comment,
9 I should not receive any evidence or permit any
10 cross-examination or argument as to the appropriateness
11 of the conduct. I should confine the evidence to
12 a mere investigation of what happened and the report
13 to a mere recital of the facts.

13 I have not even tentative views on
14 the answer to that question, but I feel very strongly
15 that the problem must be addressed and must be
16 resolved satisfactorily before we can even launch
17 into Phase II. We have therefore problems in both
18 Phases to resolve. One, more urgent, and the other
19 perhaps more troublesome. The sooner we get to them
20 the better. The question is when we can have the
21 argument and where it should be held. I have to
22 tell you that for personal reasons I am not available
23 tomorrow morning and I will not receive any comments.

23 MR. LAMEK: Mr. Commissioner, if I
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2 may say, sir, respectfully it is wise to try to
3 resolve, or at least identify and air the problems
4 that you have adverted to in advance of their arising
5 in the course of evidence.

6 I propose, sir, to convene the meeting
7 of counsel tomorrow morning when you are not available
8 anyway, to discuss these problems, to see which
9 problems particular counsel see as arising, and to
10 get if I can a feel for the views of different
11 counsel on those problems. It may be appropriate
12 to do it tomorrow morning so as to give people time
13 between now and then to consider what they believe
14 the problems to be, and to give them time thereafter
15 to sort out their position with respect to those
16 problems.

17 I suggest, sir, that the hearings
18 resume on Wednesday, if possible, to receive sub-
19 missions as to future proceedings and matters of
20 evidence that you have adverted to and that sort of
21 thing. That the evidence of Mrs. Trayner in the
22 meantime be suspended to be called back sine die I
23 would take it.

24 THE COMMISSIONER: Yes. Do you
25 anticipate the meeting will take all day tomorrow?

MR. LAMEK: Mr. Commissioner, I do not



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2 know, I do not know, with a large number of lawyers
3 sitting in a room and discussing problems with this
4 complexity it may, I don't think it should be rushed
5 if I may.

6 THE COMMISSIONER: What about the
7 problems that were earlier raised about the further
8 evidence on Phase I, will that be done at the same
9 time?

10 MR. LAMEK: It may be that some of that
11 evidence will really abide by the conclusion of these
12 matters.

13 THE COMMISSIONER: Deteriorate, yes.

14 MR. LAMEK: Others of it will not
15 perhaps.

16 THE COMMISSIONER: Has anyone else any
17 comments? Yes, Mr. Brown.

18 MR. BROWN: With respect to the
19 submissions on Phase II Mr. Sopinka may not be avail-
20 able this week. We do not wish to be put in the
21 position that we would have to make our submissions
22 on something that won't commence for another month
23 or two months within the next two days. We are
24 certainly prepared to discuss the problems, but if
25 there is going to be formal argument on the evidence
which is admissible I would ask that that wait for



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a future date.

THE COMMISSIONER: Well, perhaps you can get Mr. Sopinka. I don't know what we are going to do about that, but it does become urgent because as you may know it took us from November until last Thursday to resolve this issue. I don't want to be delayed for a similar length of time on the resolution of the second issue. So it is important. I think you will have to communicate with Mr. Sopinka so you can at least present your position on Wednesday. What your position is with respect to it, and of course the Phase II problem is very important to you and Mr. Hunt. Does anyone else have any comments? All right. Is there anything else, Mr. Lamek?

MR. LAMEK: Just one other thing, if I may, Mr. Commissioner. It is a matter that in a sense is very trifling by comparison with the problems to which you have referred already. It is a matter of concern and I suggest it should be addressed. I refer to a column by Mr. Dennis Braithwaite, on page 11 of the Sunday Sun of yesterday, headed "Probe Nails Nurses".

Mr. Commissioner, over the past 10 months we may have become a little spoiled by the generally very high standard of accuracy and



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2 responsibility exhibited by the news media in their
3 coverage of these proceedings. In light of that
4 experience it was the more disappointing to see
5 Mr. Braithwaite's column, and I feel obliged to
6 comment upon it because the column, if it is left
7 unanswered, creates and I hope I choose my words
8 carefully, creates a totally false and irresponsible
9 picture of what has been happening in these proceedings
since late last spring.

10 Mr. Braithwaite apparently decided to
11 ride into battle on behalf of the nurses, and to that
12 I do not object of course. What is objectionable,
13 however, is that Mr. Braithwaite appears not to have
14 made the slightest effort to check the validity of
15 his premises, and he so easily could have done that
16 by recourse to a number of different sources,
17 including the Sun's own staff who have covered this
18 Inquiry daily and in a very professional way from
the very beginning.

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2 I refer, sir, to the following
3 statements in Mr. Braithwaite's column, his very
4 opening sentence:

/EMT/ln 1
5 "There appears to be a strong
6 bias against women in the investiga-
7 tion of baby deaths at the Hospital
8 for Sick Children, including the
9 current Grange Commission hearings."

10 I will say something about that in a moment, but
11 my first response is that it is too absurd to
12 answer, but it is odd that it should be the
13 observation of someone who in his next paragraph
14 goes on:

15 "... the nurses at the Hospital
16 have been coming here, in their
17 testimony which has included gossip,
18 hearsay and innuendo, have unwittingly
19 fulfilled the stereotype of their
20 sex; namely that they are bitchy,
21 unkind to one another and will not
22 bond as men are supposed to do with
23 ease."

24 It may be the beam lodged in Mr. Braithwaite's
25 eye impairs his ability to see clearly.

In the second paragraph, sir, the



1
2 first sentence Mr. Braithwaite says:

3 "The only witnesses called before
4 the Commission have been women,
5 nurses at the Hospital."

6 In the sixth paragraph:

7 "Why none of the Hospital Doctors
8 been called to testify?"

9 In the seventh paragraph:

10 "Yet there hasn't been a word
11 out of the Sick Children's Doctors
12 concerning the grave events at the
13 Hospital."

14 Mr. Braithwaite, sir, has been
15 hibernating; his preparations for the long cold
16 winter must have started last spring. Since this
17 enquiry began we have heard evidence of sixteen
18 doctors from the Hospital and eight medical doctors
19 from outside the Hospital.

20 We have heard from a host of
21 biochemists, pharmacologists, epidemiologists
22 and others. Several of those have been from the
23 Hospital.

24 The evidence of physicians who
25 were or are at the Hospital now has occupied some
59 of the 135 days of the evidence of this



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Commission so far, and the physicians both in chief and in cross-examination have dealt repeatedly and at length with the matters upon which Mr. Braithwaite suggests there has been a silence from them: clinical condition of the children, digoxin doses, propriety of the doses prescribed, digoxin levels, orders to hold digoxin, drug errors.

As you know, sir, a whole panoply of circumstance and events has come from those doctors as well, and to state the contrary is in my submission not merely bad journalism, it is irresponsible journalism.

Mr. Braithwaite's colleagues in the news media don't escape his misplaced wrath either. He says:

"The media have jumped on the story making it out to be a case of undetected mass murder which is a much juicier way of handling it than a series of tragic accidents or errors."

He goes on to say:

"There has been no evidence suggesting anyone on the staff committed the murder."



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2 He is apparently also unaware of the conclusions
3 of Judge Vanek at the preliminary enquiry in
4 the prosecution of Susan Nelles, as well as of the
5 evidence we have heard here, sir.

6 Finally, the Canadian Civil
7 Liberties Association is alleged to have called
8 attention to what he says in quotes is the "kangaroo
9 court nature of these hearings". I have no
10 knowledge of the Association having said any such
11 thing, and I suspect that the Association has not
12 either, sir.

13 With respect to the allegation
14 of bias against women, I am also authorized, and
15 indeed I am instructed by Ms. Cronk to say this:
16 that women and men with an interest in the proceedings
17 of this Commission are of course free to form
18 their own opinions concerning this enquiry. It is
19 to be hoped they would be assisted in so doing by
20 the efforts of responsible and accurate journalists
21 and that they have no need of, and neither are they
22 well served by the assistance of the ill informed.

23 So Mr. Braithwaite concludes his
24 column with a question which was perhaps intended to
25 be rhetorical:

"What does the Canadian Bar



1
2 Association say about these
3 proceedings?"

4 It may be that the most appropriate response is
5 a question which perhaps is intended to be
6 rhetorical: what does the Canadian Press Council
7 say about this kind of journalism?

8 Mr. Commissioner, I thought it
9 appropriate and necessary to comment upon that
10 matter.

11 MR. COMMISSIONER: Well, thank
12 you, Mr. Lamek.

13 I don't think I need to say
14 anything. You said it all. I accept and I agree
15 with everything you have said.

16 Well then we adjourn to Wednesday.
17 Is that correct?

18 MR. LAMEK: Until Wednesday, sir,
19 and I will be in touch with Counsel as to a place
20 for the meeting tomorrow.

21 MR. COMMISSIONER: Yes. And if
22 you want me tomorrow afternoon I am available. If
23 you don't I will not take offense.

24 MR. LAMEK: Thank you, sir.

25 MR. COMMISSIONER: Yes. All
right.

Whereupon the hearing adjourned at 10:20 a.m.
until Wednesday, April 18th, 1984 at 10:00 a.m.

